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LOS ANGELES BAR BULLETIN



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The President's Page

Theodore Roosevelt Centennial

By E. AVERY "JUD" CRARY

President, Los Angeles Bar Association

Theodore Roosevelt was not a lawyer, but his philosophy of life was that of many a lawyer living today and it poses a challenge to all of us.



E. Avery Crary

"I wish to preach not the doctrine of ignoble ease, but the doctrine of the strenuous life, the life of toil and effort, of labor and strife; to preach that highest form of success which comes, not to the man who desires mere easy peace, but to the man who does not shrink from danger, from hardships, or from bitter toil, and who out of these wins the splendid ultimate triumph."

So spoke Theodore Roosevelt, the youngest man ever to hold the office of President of the United States. He was born October 27, 1858. On this one hundredth anniversary of the birth of this noble American, I hope you will excuse some hero worship on my part. On his taking office as President there were some who said he would act too hastily, he was too young and hotheaded. Like all of us he no doubt made

mistakes but he learned by them, and no more can be asked of any man.

The full-bodied patriotism of Theodore Roosevelt so energetically demonstrated throughout his life will always be a behavior pattern that all of us can well endeavor to emulate. Life was a great challenge to this illustrious American who, through his entire life, held the best interests of his country paramount to all else. His was a rugged active life of devotion to duty and to his high ideals. The spirited and energetic leadership of Theodore Roosevelt in the field of statesmanship and politics has been equalled by few, if any, of our patriots. He had the high heart and God-fearing ability to make decisions, and to follow them through to conclusion, which earned him the trust, respect and enthusiastic support of the people.

His was not the delicate touch when battle was the order of the day to bring objectives to successful conclusion. The philosophy of living of this great man is well embodied in his description of The Man Who Counts—

"It is not the critic who counts; not the man who points out how the strong man stumbled, or where the doer of a deed could have done better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood, who strives valiantly, who errs and comes short again and again because there is no effort without error and shortcoming. It is the man who does actually strive to do the deeds, who knows the great enthusiasm, the great devotions, who spends himself in a worthy cause, who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who know neither victory nor defeat."

This certainly describes the career of many a lawyer.

Praises of the efforts and accomplishments of Theodore Roosevelt will be sung for generations to come, but I know of no finer tribute that could be paid to one who so richly deserved the unfailing love and admiration of all Americans than to say of him, by way of paraphrasing the words of St. Paul in his second letter to Timothy, "He fought the good fight, he finished the race, he kept the faith."

The Trial of Corporal William Wemms and Seven Others

By LEON THOMAS DAVID*

Facts are stranger than fiction, and sometimes the myth is so firmly entrenched that the facts, even from a court transcript, pass unnoticed for many years, only to be rediscovered with startling novelty. Consider the case of Corporal William Wemms and seven others, brought to trial on November 17, 1770, for murder, before the Superior Court of Judicature and Court of Assize for the county of Suffolk. Three distinguished jurists were on the bench, Honorable Benjamin Lynde, Honorable John Cushing, and the Honorable Peter Oliver. The indictments were in ordinary form of the time, that each defendant "not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil and their own wicked hearts, did . . . with force and arms, and of their malice aforethought assault one Crispus Attucks, then and there being in the peace of God and of the said Lord the King, and that he . . . then and there held in his hands, charged with gunpowder and two leaden bullets, then and there, feloniously, wilfully and of his malice aforethought, did shoot off, and discharge at and against said Crispus Attucks (and) . . . did then and there by the force of the said gunpowder so set off and discharge as aforesaid, did then and there . . . strike penetrate and wound the said Crispus Attucks in and upon the right breast, a little below the right pap of the said Crispus, and in and upon the left breast, a little below the left pap of the said Crispus . . . of which said mortal wounds the said Crispus Attucks then and there instantly died." Like indictments existed for the death of Samuel Gray, Samuel Maverick, James Caldwell and Patrick Carr; and those of the eight not charged with each killing were charged with helping, aiding and abetting each.

But this was no ordinary case. Though prosecuted as individuals, these were the grenadiers of the 29th regiment who on March 5 of that year had fired upon the Boston crowd in King Street, which

*Judge, Superior Court, Los Angeles County, Appellate Department.

already had been branded as a massacre; affidavits of witnesses, secured in preliminary hearings had reached England and had been printed and circulated in the Colonies. Then there was the familiar engraving by Paul Revere, which showed heartless and deliberate shooting.

The jury now empaneled contained no citizen of Boston, for all such were successfully challenged for cause, but men of sturdy families from the other Suffolk towns sat in the box. Feeling ran high. It was a foregone conclusion that the defendants were really fighting for their lives. The general feeling of Boston was against His Majesty's government, against his customs officers who sought to stop smuggling, against the presence of troops, against the closing of the port which had followed the destruction of the East India Company's tea, against the commissioners who were conducting the royal business. For months before the unhappy business which brought about the trial, there had been vendetta between the idlers of the town and the individual redcoats on the streets, quarrels and fist-fights, which on March 5 had gotten out of hand. In fact, Massachusetts and particularly Boston had been in political revolt against the Royal government for almost a hundred years.

Prosecuting for the Crown were Samuel Quincy and Robert Treat Paine. Both were distinguished lawyers. Loyalist Quincy within ten years time was to leave the New England home of his family and to become Solicitor General of Antigua. Robert Treat Paine was to be a signer of the Declaration of Independence, Attorney General of Massachusetts, and Judge of its Supreme Judicial Court.

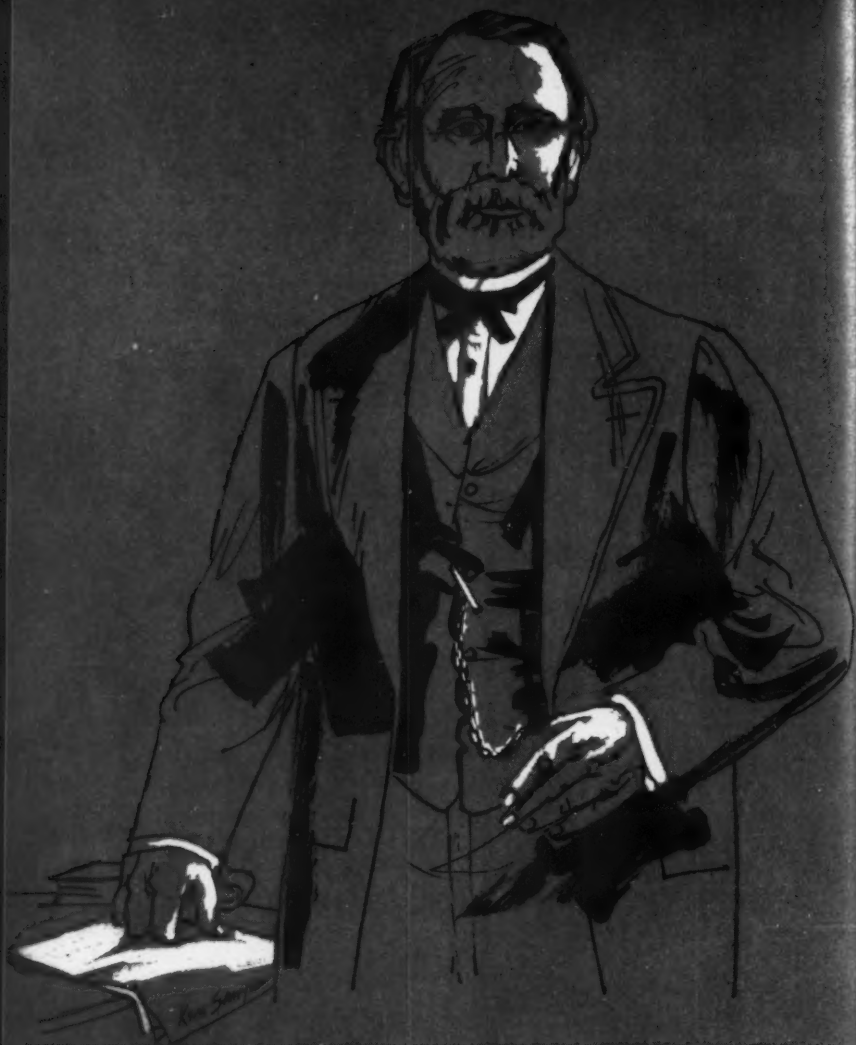
In this atmosphere of hostility, against top-flight counsel for the Crown, who could be found to represent these prisoners? Could any Boston or Massachusetts lawyer take the case, without hazard-ing his professional future? Could anyone whose political sentiments were against the stupid policies of the Crown hazard his political future by defending the soldiers in Boston because of the same policies? Could a lawyer be found who would do his duty as was enjoined by English law, not rejecting the cause because of any consideration, personal to himself? If no such advocate could be found, eight men would assuredly die for firing on the crowds, allegedly at the command of their superior officer, Captain Preston.

The answer to these questions was stranger than fiction. The ad-

vocates appeared. They were John Adams and Josiah Quincy, Jr. John Adams was undoubtedly the most able of those who opposed the Crown, not with riot and rabble, but with political conviction and learned argument. Josiah Quincy Jr. was the brother of the Prosecutor and his greatest rival at the Bar. He was one of the most devoted men of those who fostered the Revolution. Of course, John Adams later signed the Declaration of Independence, became vice-president and president, and the father of another president, and was minister to France in critical years when the Revolution hung in the balance. What an anomaly that while Paul Revere's engraving and the pamphleteers were making the incident in Boston a rallying point for revolution, the chief architect of independence should be defending the soldiers implicated in the so-called Boston Massacre.

The witnesses appeared, over fifty of them. Josiah Quincy's cross examination brought out the details of such character that it is said that Adams had to restrain Quincy; Adams thought it was enough to vindicate the prisoners without creating a record unduly depicting the mob action of the townspeople in a light which might further prejudice them officially and in the minds of their neighbors. The main facts quickly appeared.

A few days before the fatal evening of March 5, there had been a free-for-all down on the rope walk, where the defendant Killroy and a townsman had an altercation, which grew into a general fight, aided by adherents of the principals. One of the soldiers was badly wounded. Tension led to a series of street brawls between soldiers and street hangers-on, and on March 5 in the early evening the word spread that a cutlass had been used on a civilian. Little groups of men formed with swords, clubs, and other weapons. Then the fire bell rang, and citizens turning out with buckets were told to bring clubs. Most citizens got off the streets and went indoors, but bands of excited townsmen roved the streets and one of them attacked soldiers at the very gate of the barracks in town. Soldiers sallied forth to do battle on one or more occasions and were forced back into barracks by their officers. But one group of soldiers in particular roughed up a considerable number of townspeople before being brought behind doors. There was a cry that the townsmen groups should converge upon the main guard; there was a rumor that the troops were planning to cut down the Liberty Pole, as had been done in New York.



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At first removed from the tumult, a red-coated sentry walked his post before the Customs House, flintlock over his shoulder. A crowd of hangers-on, estimated by witnesses at from 20 to 90 persons, gathered, and pelted him with snowballs and oyster shells. With every hit, there was a "huzza" and the crowd pressed in upon him. Some said, "Let's burn the sentry box, overboard with it." The witness Cruikshank testified that there was abuse of the sentry; "they called him lobster and rascal, and wished him in hells flames, over and over." Cruikshank further testified that the sentry replied that this was his post; that he would maintain it, and that if they offered to molest him, he would run them through.

Pressed backward by the taunting crowd, according to one witness, the sentry backed up the Custom House steps, knocked with the butt of his gun at the door, but was not admitted. He loaded his piece, and another witness testified he warned them "keep off, or I will fire." The crowd then taunted, "fire, fire, you dare not fire."

Stationer and bookseller Henry Knox, later to become Washington's famous chief of artillery, saw the sentry "with his piece held in the position, charge bayonets. I told him that if he fired he must die for it. He said, 'damn them, if they molested him, he would fire.' I endeavored to keep one fellow off the sentinel and either struck him or pushed him away." But the sentry, having retreated as far as he could, called "guard, guard, two or three times." In the meantime, two citizens went to the barracks and warned the officers there that relief should be sent to the sentry, or he would be killed. So Captain Thomas Preston, Corporal William Wemms, and the seven others went to the relief of the sentry. They had to push through the crowd, and as they went with bayonets fixed, they were pelted with "snowballs and sticks and more rubbish than I can mention," according to a witness. A barber's boy ran through the crowd, stating that the sentry had knocked him down, according to witness Lee, and the crowd yelled, "kill him, kill him."

The squad reached the sentry, and ringed him in a semi-circle. They were pelted with debris, sticks, and snowballs. The crowd, some armed with legs from stalls torn from the nearby market, began hitting the soldiers' flintlocks, held at the ready. Some said, according to witness John Gridley, that the crowd should go on and attack the main guard, "as the readiest way to get rid of these people." But the deceased Attucks, said witness Andrew, attempted



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to hit Captain Preston with a club. Preston had been urging the crowd to disperse. The blow intended for Captain Preston hit private Montgomery and knocked him to the ground. "The firelock fell from his hand," said witness John Waddell, "he took it up again and fired, and I think he was the first that fired." At least, he was not the last to fire. There was a general melee.

Patrick Carr, one of the citizens who died of his wounds, made a statement in contemplation of death that he thought the soldiers would have fired long before, that they fired in self-defense. He had had brushes before with soldiers in Ireland.

Self-defense was the plea eloquently made by John Adams. Killroy and Montgomery were the only soldiers in the squad definitely identified as having fired. Since the townspeople were taunting the soldiers to fire, no one was able to determine definitely whether there had been a command by Captain Preston to fire.

Adams urged the reasonable doubt. He made a classic statement:

"We find, in the rules laid down by the greatest English judges, who have been the brightest of mankind, that we are to look upon it as more beneficial, that many guilty persons should escape unpunished, than that one innocent person should suffer. The reason is, because it is of more importance to the community that innocence should be protected than it is that guilt should be punished; for guilt and crimes are so frequent in this world, that all of them cannot be punished; and many times they happen in such a manner, that it is not of much consequence to the public whether they are punished or not. But when innocence itself is brought to the bar and condemned, especially to die, the subject will exclaim it is immaterial to me whether I behave well or ill, for virtue itself is no security. And if such a sentiment as this should take place in the mind of the subject, there would be an end to all security whatsoever."

As to the unfortunate affray, he said:

"The soldiers were chained to the spot by the command of their officer. They were bound by their oath to obedience. They could not defend themselves against so many people as were pressing on them. They had every reason to believe their lives were in danger. They were a lawful assembly, and the people attacking them, were, by every principle of law, a mob. We have been entertained with a great variety of phrases, to avoid calling this sort of people a mob. Some call them shavers, others call them geniuses. The plain English is, gentlemen, most probably a motley rabble of saucy boys, negroes, and

mulattoes, Irish teagues and outlandish jack tars. And why we should scruple to call such a set of people a mob, I cannot conceive, unless the name is too respectable for them. The sun is not about to stand still or go out, nor the rivers to dry up, because there was such a mob in the city of Boston on the fifth of March that attacked a party of soldiers. Such things are not new in the world, nor in the British dominions, though they are, comparatively, rarities and novelties in this town. Carr, a native of Ireland, had often been concerned in such attacks, and, indeed, from the nature of things, soldiers quartered in a populous town, will always occasion two mobs where they prevent one. They are wretched conservators of the peace."

Adams' final plea was that the law does not bend to the vicissitudes of government or the passions of men, but that it should not be a respecter of persons, commending the good and punishing evil by whomever committed. "On the one hand, it is inexorable to the cries and lamentations of the prisoners; on the other hand it is deaf, deaf as an adder to the clamors of the populace."

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The jury was out two and one-half hours. It acquitted all defendants except Montgomery and Killroy, and found them guilty of manslaughter. They pleaded benefit of clergy. Instead of being branded with "M" on their foreheads where all could see, they were branded in open court, inside their hand, and were released. Captain Preston, tried separately, was acquitted from the jury box, and was commended for his conduct on the occasion by the Court. Four persons who, it was claimed, shot at the mob from within the Custom House were likewise acquitted by the jury from the box.

Almost two hundred years have passed. The Boston Massacre is a landmark in our Revolutionary history. What matter that the popular reports of the occurrence were far from objective? Paul Revere's engraving was an operative fact in achieving independence from Britain. But today, American and Briton alike can take pride in the Trial of Corporal William Wemms and Seven Others. Here was an example of the best in the common legal heritage shared by both English-speaking peoples. We see the military amenable to the civil authority, not hiding behind the protective mantle of the executive power. We find able counsel for the prosecution, reinforced by great public clamor for the lives of the defendants. We find John Adams and Josiah Quincy Jr. defending those men, discarding as unworthy the personal considerations which under the circumstances made it highly inexpedient for them to undertake the defense. We find a jury which must have been under tremendous community pressure, but which apparently followed the instructions of the court, remaining fair and impartial to both sides, and reaching a decision which they knew would be unpopular and which might lead to personal attacks upon themselves.

It is fortunate for the legal history of the United States that some records exist of this trial, a monument to Justice.¹

¹Some records are still on file in the Suffolk County Courthouse, Massachusetts. Publications of these records were made in 1770, 1807, and 1824. Recently, the records have been brought to public attention by Esther Forbes in her biography of Paul Revere, and by Elizabeth Bowen in her biography of John Adams. For additional information, consult X *American State Trials*, pp. 415-510; I *Chandler's Criminal Trials*, p. 311.



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A Law Clerk At the Supreme Court of the United States

By RODERICK M. HILLS*

The usually obscure law clerk of the Supreme Court of the United States has found recent "favor" in this country's more widely read publications. His supposed influence has been questioned by editorial comment¹ and in Congress, and his critics include even the fictional tractor-salesman, Alexander Botts, of *Saturday Evening Post* fame, who reports:

... [I]f you think some decision by the United States Supreme Court is foolish don't blame the justices. They can't possibly have time to wade through all the evidence and write all the decisions in all the cases that come before them. So most of the work has to be done by bright but inexperienced young law clerks just out of law school.³

Several less colorful but seemingly better informed commentators (including several former clerks) have responded to this indirect criticism of the Court by explaining the functions of a clerk in detail and by minimizing the possibility that the clerks could have any significant effect on the Court's decisions.⁴ These exchanges have created considerable writing about clerks, but little has been said, understandably, concerning his experience, his associations, the practical value of his job and the work he finds after leaving the Court.

The most obvious attraction of a clerkship is, of course, the opportunity of a close association with the members of the Court. Personal contacts in the form of discussions between a clerk and his own Justice are daily and constant. A clerk usually has an opportunity to express his views on each *certiorari* petition and to suggest changes in the opinions written in his office. He will also in the course of a year have occasion to speak with the Justice

*A law clerk to Mr. Justice Stanley F. Reed, Associate Justice Supreme Court of the United States, 1955-1957. Now associated with Musick, Peeler and Garrett.

¹"Bright Young Men Behind the Bench," *U. S. News and World Report*, July 12, 1957, pp. 45-48.

²Botts and the Day the Dam Broke," *Saturday Evening Post*, August 16, 1958, p. 73.

³W. H. Rehnquist, "Who Writes Decisions of the Supreme Court?" *U. S. News and World Report*, December 13, 1957, pp. 74-75; W. D. Rogers, "Reply and Rejoinder," *U. S. News and World Report*, February 21, 1958, pp. 114-116; Alexander M. Bickel, *New York Times Magazine*, April 27, 1958, p. 16; and see also a letter by Judge Samuel H. Hofstadter to the *New York Times* commenting on the Bickel article, *New York Times Magazine*, May 18, 1958, p. 4.

⁴Justice Frankfurter, for example, has Professor Hart at Harvard select his clerks from Harvard graduates and deliver them "sight unseen" to the Court. The fact that several of the Justices are Harvard graduates is, of course, a material factor.

on broader topics. These interchanges create a mutual respect and friendship that continues beyond the term, and many clerks maintain a close relationship with their Justice long thereafter, sometimes by letter and personal visits, and in the case of most of the Justices, by annual or more infrequent reunions. The former clerks of Justice Reed honored the Justice each January on the anniversary of his ascendancy to the bench, and we have continued to do so since the Justice's retirement in 1957.

Although a clerk does not have the same opportunity to know the balance of the Court as well as his own superior, he will usually become fairly well acquainted with several of the Justices in the course of the Court's work and during conversations that are not necessarily limited to the business of the Court. By tradition each Justice takes lunch with the clerks once during the term and spends the better part of an afternoon discussing any subject, including his own life, which may arise. In the case of Justice Frankfurter's lunch time visit the procedure is, as might be expected, better defined. Each clerk in turn suggests a topic of conversation, and after all suggestions have been made, the discussion proceeds without a halt through each subject under the Justice's direction. Far beyond the interest raised by this "memory trick" is the fascination of his conversation. This occasion and other encounters with

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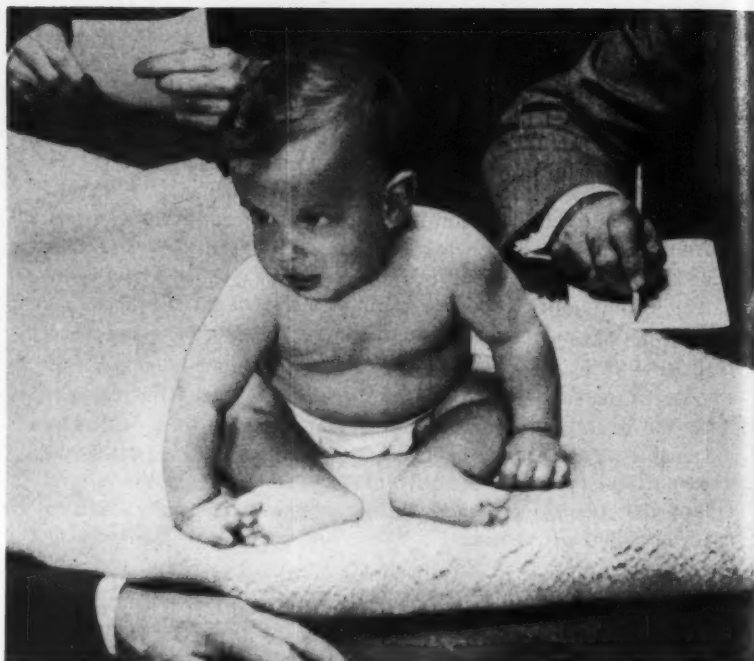
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the Justice, although perhaps uncomfortable at the time, constitute one of the most memorable aspects of the term.

Each clerk, of course, has his own particular experiences. To one it may be the companionship of Justice Douglas, a learned and devoted naturalist, during one of his frequent 20-mile strolls. Another may recall with particular fondness a day spent at tennis and conversation with Justice Black on the Justice's back yard tennis court. Such experiences cannot help but give each clerk a deep understanding and appreciation of the members and work of the Court.

As unique as the opportunity to associate with the Justices may be, the relationship between the clerks can be as memorable and valuable an experience. The debate generated between clerks as part of their work necessarily extends to broader subjects, and thus the inquisitive, if not argumentative, clerks find a willing forum for their queries.

The significance of a clerkship in terms of a priceless human experience is widely appreciated, but many people, notably practicing attorneys, greatly underestimate its practical legal value. The fact that it is a perfect education for Supreme Court practice is naturally thought to be a minor virtue by lawyers who seldom if ever appear before the Court. They overlook the fact that in a period of one year a clerk will be exposed to most of the current substantive and procedural problems of federal litigation and will in the process of his concentrated research acquire a competent grasp of the status or trend of such problems. And, in the process of this researching of some ten to twenty legal problems a week in the form of petitions and opinions, he will acquire a familiarity with more fields of law than many attorneys gain in a lifetime of practice. For example, during the week of July 18, 1958, the clerks were presented with twenty-eight new cases including problems relating to: the priority of federal tax liens, trademarks, copyrights, taxation, oil and gas, real property (submerged lands), the Federal Employee Liability Act, the Federal Shipping Act, insurance, the Railway Labor Act, bailment and segregation. With respect to each petition the clerks prepare a detailed memorandum that sets forth the principal issues involved, the arguments advanced on each issue and a summary of the case law on each issue. It is, of course, true that the primary purpose of this work is to determine whether the case is one that is appropriate for review



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in the Supreme Court; nevertheless, this judgment cannot be made until the issues presented are fully understood. This background must certainly be useful in any type of law practice.

Also, the year's work is in part a graduate course in problems of federal practice and procedure. Problems of jurisdiction, appealability, and the sufficiency of complaints are commonplace. Finally, few people can fully appreciate the amount of careful legal writing and expression that is required of a clerk in his work and in his daily interchange with his Justice and co-clerks. In short, most clerks doubtlessly feel that their experience compares quite favorably from a "practical" standpoint with equal time spent as a beginning attorney in a law firm.

In conclusion it may prove interesting to comment briefly upon the origins and destinations of clerks: their law schools and their subsequent employment. At the risk of being impeached for prejudice, I must state that graduates of the Eastern law schools, particularly Harvard, have in the past had more than their share of clerkships. In recent years between five and eight of the eighteen clerks have been from Harvard, and there are invariably two or three from Yale. The dominance was much greater ten years ago. Part of this superiority is rightfully due the preeminence of Harvard in the field of legal education, its graduation classes of five hundred and its entrance requirements. But at least part of Harvard's success must be attributed to the simple fact that the Harvard faculty who are often well known by the Justices⁵ give high recommendations to their students and urge several from each class to interview the Justices. Other schools at a greater distance from Washington often fail to take this interest in securing clerkships for their honor graduates and seldom recommend more than one student a year.

But as was noted above the Eastern dominance is now much less severe. Actually, aside from the fact that Harvard places five or six men each year, the eighteen clerkships are spread fairly evenly throughout the country. For example, during the 1955 term there were two clerks from Stanford University, Yale University, Chicago University and Georgetown; and one from Indiana University, University of California at Berkley, and Pennsylvania. The remaining seven were from Harvard. The California law schools have been particularly successful in placing graduates at the Court. In the last three terms alone California at Berkley, Stanford and

U.C.L.A. have each had two clerks, and this fall the first U.S.C. law graduate will serve at the Court.

The subsequent employment of clerks is at least as varied as are their law schools. Although Washington, D. C. claims a far greater percentage of the clerks than any other area of the country, a large and seemingly increasing number take jobs throughout the country. Again using the 1955 term as an example, two clerks are now teaching law, at Stanford and Yale; six remained in Washington, four of those in private practice, one in the U. S. Attorney's Office and one with the Solicitor General of the United States; one is practicing in San Francisco, another in Newark, New Jersey, and still another in Philadelphia. Three are temporarily in the service, and three have come to practice in Los Angeles.⁶ Only one of the eighteen is on Wall Street.

Earlier I said that many people regard a clerkship as a priceless human experience. Particularly is this the feeling of former clerks. I doubt that any one of them has regretted his year at the Court.

⁶One in a firm of over sixty, the second in a firm of twenty-five and the third in a firm of five.

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A Report on Pre-Trial Procedure

By CLARENCE L. KINCAID*

Pre-trial procedure has now been utilized in California since January 1, 1957. Its adoption as a part of our procedural law placed this state in line with a majority of the states of the Union and with the federal court system.

The intervening period has been one of experiment, education and accomplishment, wherein all of us, both lawyers and judges, have learned a great deal. Some weak spots in the Rules governing pre-trial procedure were developed. After careful consideration and consultation with committees of both bench and bar, including Subcommittee of members of the Board of Governors of the State Bar, certain amendments to the Rules were adopted effective July 1, 1958. These amendments should assure a more efficient hearing with increasingly productive results.

With the adoption by the Legislature of new and liberalized discovery rules effective the first of this year, pre-trial procedure is proving ever more effective. These new discovery rules materially implement pre-trial and, together, they are markedly serving to narrow the issues, eliminate the element of surprise and in stripping the case to its essential fundamentals. When this is accomplished settlement frequently follows. If a trial takes place it is usually shorter and is more likely to become an efficient and orderly search for truth rather than a game of wits between lawyers, or a case where the litigant with the most wealth or guile may have an undue advantage over the other.

In the larger metropolitan areas of San Francisco, Alameda and Los Angeles, substantial progress is reported. Most of the less populous counties tell of efficacious results. Judicial Council study shows that whenever the judges have given the right kind of leadership, the bar has generally co-operated. Conversely, in a few areas, judges have either been unsympathetic with the procedure or have failed to understand their responsibilities in this regard.

Judge Albert C. Wollenberg, the chief pre-trial judge in San Francisco County during 1957 reported to the Judicial Council

*Judge of the Superior Court; Chairman, Pre-Trial Committee, Judicial Council of California.

that their first year's experience with pre-trial procedure produced gratifying results. He largely credits pre-trial with the reduction in waiting time for trial from 21 to 13½ months in jury litigation and an equal speeding up of nonjury cases. After reporting more and earlier settlement of cases, particularly in the field of personal injury litigation, he described additional benefits gained by stating:

"Our experience in San Francisco has demonstrated not only the efficacy of pre-trial as a means of reducing calendar congestion, but also that it tends to effectuate a more expeditious trial. Pre-trial can settle pleadings, insure the early completion of discovery, and reduce the number of issues. As a result, attorneys for both sides are better prepared, surprise is largely eliminated, and counsel gain additional knowledge of the strengths and weaknesses of their respective cases, whether for use in the course of trial or in settlement negotiations.

"The advantages I have mentioned reflect, in my opinion, substantial savings in the costs of litigation—both to the individual litigant and to the taxpayer. The litigant, if not saved the expense of a trial altogether, pays for a shorter and simpler trial. The public inevitably gains whenever any branch of government, the judiciary included, improves its efficiency."

Judge James R. Agee reported for Alameda County that pre-trial was proving successful there in all types of litigation but with personal injury and death cases benefiting least. As to this latter class of case he reports that the court is dealing mostly with a comparatively small number of specialists. He says that too many of them still take the position that they are participants in a game of wits in which the elements of bluff and secrecy are essential to their survival as trial lawyers. He expresses the hope that the new discovery rules will help break down this attitude and that the negligence attorneys themselves will more fully co-operate.

A similar situation, possibly to a lesser degree, is still evident in Los Angeles County. Most attorneys are giving the court their fullest assistance. A small segment of the negligence bar still seem reticent. They send juniors with little authority, still following the old game of hold out and wait for the breaks until the trial date. They apparently resent any procedural methods whereby they are required to disclose any facts as to their case, still relying on ambush and surprise.

Some of these lawyers apparently have small concern as to the problems confronting the courts of the land in the handling of

mass litigation, particularly in the negligence field. They still largely demand jury trials, which take more than twice the time of non-jury cases. In the face of a 5.3% increase in civil filings over 1957 and a present 15-months waiting time, it surely must be evident that every possible proper means must be utilized to meet this challenge.

The first eighteen months statistics as just released for Los Angeles County by our County Clerk, Harold J. Ostly, credit pre-trial procedure with substantial accomplishments. They demonstrate both a material savings in trial time of pre-trial cases over those not subjected to this procedure, and in increased settlements and dispositions.

A unique opportunity was presented to obtain a comparison in the trial time needed to try non-pretried cases as against those that had been subjected to pre-trial procedure. This was made possible because there was a large backlog of cases awaiting trial for which memorandum to set had been filed before the new pre-trial rules became effective. Beginning with June, 1957, the survey was commenced covering civil cases sent out for trial from the Master Calendar Department One. Each case was analyzed as to: (a) Length of trial time in days and half days; (b) Whether jury or nonjury; (c) Whether civil or domestic relations; (d) Whether pretried or non-pretried.

For the ensuing year some 2800 cases were tabulated. The statistical comparison demonstrates a saving for pretried cases of approximately $\frac{1}{2}$ day of trial time per case or a total of 1196 days. This represents a net saving of the time of about $4\frac{1}{2}$ judges.

After first taking into consideration the constantly increasing ratio of cases filed, the County Clerk's records disclose a continuing gain in case settlements of some 18% to 20% over those in 1955 and 1956.

With pre-tried cases requiring a shorter trial time it inevitably follows that the average case dispositions per month of the trial judges has increased from $25\frac{1}{2}$ in 1956 to better than 27 in the 1957-58 statistical period.

Presiding Judge Louis H. Burke reports that since pre-trial has been in effect there has been a notable change in the percentage of cases announcing ready for trial on the call of the civil master calendar. He states that, whereas formerly only 25% of the jury

cases called were ready for trial, at the present the percentage is running about 35%.

Experience gained on the part of both attorneys and the pre-trial judges and better preparation in advance by the attorneys have enabled a reduction in the number of judges required to carry on the work.

The new amendments to the rules have been fully publicized. They stress adequate preparation in advance of the pre-trial hearing. They now specifically require a valid conference by the attorneys, either in person or by communication, in order to fully discuss the case and reach agreement upon as many matters as possible. A new requirement is that they shall prepare and submit a *joint* written statement of the matters agreed upon and a joint or separate written statement of the factual and legal contentions to be made as to the issues remaining in dispute. Also all discovery proceedings and physical examinations must be completed in advance of the conference under possible penalty of forfeiture thereof. Pre-trial judges will increasingly insist, not only on adequate preparation, but that each appearing attorney shall have a thorough knowledge of the case, be prepared to discuss it and to make stipulations or admissions where appropriate.

These rules are based upon reason and experience and it is only by a full compliance that the maximum of benefits to both litigant and lawyer may be had. The co-operation of both bench and bar is necessary to a full accomplishment.

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TAX REMINDER

VALUABLE NEW TAX BENEFITS ARE NOW AVAILABLE

By RALPH H. MOORE*

There are definite and valuable benefits made available to taxpayers by the newly passed Mills Bill and Small Business Tax Revision Act of 1958. The new law contains numerous substantive changes and closes some loopholes but also provides opportunities for business to make substantial tax savings.

This note can only bring to your attention a few changes of special interest to the general practitioner.

NEW ADDITIONAL DEPRECIATION ALLOWANCE

One benefit which can be made use of right now in 1958 is the Additional First-Year Depreciation Allowance. The new provision in effect offers a bonus of an additional extra deduction in the year of purchase equal to 20% of the cost of tangible personal property, either new or used, on up to \$10,000 cost each year for a single taxpayer or on up to \$20,000 cost for a joint return of husband and wife.

Those benefited include all taxpayers except trusts. There are limitations on the benefit in the case of estates and affiliated groups as defined in the law which will apply in a few cases.

The property covered is any depreciable tangible personal property, new or used, with a remaining useful life of 6 years or more at the time of purchase. It must have been purchased in 1958 or later for use in a trade or business or for holding for production of income.

"Purchase" as defined in the law excludes acquisitions from family members including spouse, ancestors or lineal descendants, but not brothers and sisters, acquisitions from other members of an affiliated group as specially defined, and acquisitions by gift or bequest.

The "cost" on which the bonus allowance is given is restricted to new cost and excludes the amount of any trade-in on previously held like property.

The Congressional Committee Report makes clear that the

* Member of the Los Angeles Bar Association and its Committee on Taxation.

additional depreciation allowance of 20% of cost is without regard to salvage value and is without proration to the number of days remaining in the tax year of purchase. The remaining 80% of cost receives the usual depreciation allowance treatment under prior laws and regulations for the actual period held, so there is a doubling up in the year of purchase.

The taxpayer electing to take additional depreciation allowance selects the particular property to be covered up to the \$10,000 or \$20,000 aggregate cost limit. Since the limitation is on an annual basis, the benefit will be available on new purchases each year. It starts with 1958 purchases reported in returns for taxable years ending after June 30, 1958.

INCREASED MINIMUM CREDIT FOR ACCUMULATED EARNINGS TAX

The minimum credit is now \$100,000, up from \$60,000, before a corporation can become liable for the special tax on unreasonably accumulated earnings.

Few really "small business corporations" will accumulate over \$100,000 undistributed earnings but they can do so without penalty if the total earned surplus, including the \$100,000, is found to be reasonably required for the business.

This increase in the minimum credit to \$100,000 will lessen the need for multiple entities for small business. At the same time this increase should not greatly influence the desirability of tax planning and the use of multiple entities from the inception of new enterprises where large earnings are anticipated or possible.

CERTAIN SMALL BUSINESS CORPORATIONS MAY ELECT PARTNERSHIP TYPE TAXATION

Prior law permitted or required certain partnerships to be taxed as corporations but now stockholders of qualified small business corporations with 10 or fewer shareholders can elect to skip the corporate tax and be taxed prorata on the firm's income, whether or not distributed, as in a partnership.

It is only possible in this note to call the possibility to your attention and warn that for taxable years including the enactment date the election to be so treated must be officially made by December 1, 1958. For later years the election is to be made during the first month prior to or after the beginning of the firm's taxable year.

In Appreciation of Meritorious Service

The 81st Annual Convention of the American Bar Association is now history. We have been assured by the ABA officials and many of the visiting lawyers that this was an unusually fine convention. Any number of members attending said it was the largest to date. The success, insofar as concerns the phase of the convention in the field of endeavor of the lawyers of Southern California as hosts, was, of course, due to the unfailing and able efforts of several hundred lawyers who participated as members of the numerous committees and the many more who so generously contributed of their funds to the end that the careful planning of the Host Committee could be activated.

The great contribution of the Committee Chairmen and committee members to the development of the overall plan and their close cooperation and meticulous execution of their respective parts of the program made the entire convention a real pleasure for all who attended. The resulting plaudits which were showered down by President Rhyne, the Board of Governors of the ABA, and enumerable members attending the convention, were received by a comparative few of us and we want everyone who had a part in the convention to know that their efforts and contributions were very much appreciated, not only by the members of the American Bar Association, but by the Los Angeles Bar Association, its affiliated associations, and the other bar associations in Southern California which so ably assisted in the work involved and in providing the necessary funds that made the hosting of the convention possible.

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Brothers-In-Law

By George Harnagel, Jr.



George Harnagel, Jr.

Every October the officers of the Illinois Bar Association, together with a number of other lawyers selected for the purpose, engage in what has come to be known as "The Caravan." This means that they travel in a group from judicial district to judicial district throughout the state to discuss the common problems of the legal professions with members of the local bar.

The county and city bar associations in each district are federated and the district federation is in charge of local arrangements and provides for the entertainment of the visiting lawyers and their wives. Each district federation also selects, from a list provided by the state association, the topics to be discussed in its area. The state association, through its sections and committees, provides qualified speakers on the subjects selected and these speakers become part of The Caravan.

* * *

"In Houston a complaint against a lawyer a day is the average.

"Think upon that. Three hundred and sixty-five complaints a year in only one Texas town. Granted that many of them are frivolous and without foundation; but complaints by some lawyer's client they are. Perhaps by your client."—From an article in *Texas Bar Journal* on the work of Grievance Committees.

* * *

Ben Hanson, a 31 year old lawyer, has been elected mayor of Tacoma, Washington. He is the youngest mayor in its history.

* * *

"House counsel is on the firing line, constantly, while, the 'down-town' practitioner is perfectly free to 'harumph' and hedge his way out of a question until he has had plenty of time to mull it over and research it thoroughly. House counsel is dealing, every day, with corporate executives who are alert and quick to discern indecision and unwillingness to make a commitment. He may not evade but must give answers directly and constructively or must

simply confess inability to answer the question offhand and promptly research the problem and come up with an opinion."— From an article on "Captive Lawyer" by Lee F. Driscoll, Jr., in *The Shingle* of the Philadelphia Bar Association.

* * *

The executive committee of the **New York** State Bar Association has approved a group professional liability policy which has been designed especially for the members of the association.

* * *

The **Denver** District Court has instituted a marriage counselling service which is available on a voluntary basis to the parties to divorce actions, but only if both husband and wife request it.

* * *

Court congestion has inspired a proposed amendment to the constitution of **Arizona** which is receiving active support from the Arizona State Bar. The amendment would empower any judge of the supreme or superior court who is drawing retirement pay, to serve, with the consent of the litigants involved, as a supreme or superior court judge upon the call of the court in which he is asked to serve.

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Silver Memories

Compiled from the World Almanac and the L. A. Daily Journal of September, 1933, by A. Stevens Halsted, Jr.



A. Stevens Halsted, Jr.

The Sixth Annual Convention of the State Bar is being held this month at Del Monte. Topics to be considered are: the reduction and practical elimination of the congestion in all trial courts, and the progress made toward relieving congestion in appellate tribunals. **Guy R. Crump** of Los Angeles is the retiring president and **Hubert O. Wyckoff** of Watsonville will serve as president for the coming year. Wyckoff has practiced law for 36 years, has served for two years on the Board of Governors, and is a past president of the old Voluntary California Bar Association, serving a term in 1921-22. **Chester H. Rowell**, well-known writer and publicist, will deliver the Alexander Morrison address. **John Perry Wood**, **Norman A. Bailie** and **Oscar J. Seiler** have been elected to the Board of Governors of the State Bar from Los Angeles County. About 400 attorneys have registered for the Convention.

* * *

Maine, the nation's original dry state, is voting this month on ratification of the 21st (repeal) Amendment. Both wets and dries have campaigned vigorously, mindful of the weight which a Maine victory lends to make repeal a fact before the year's end. Maine is not alone the pioneer prohibition state, but famed, too, as a political barometer as evidenced by the time-worn adage "As Maine Goes, So Goes the Nation."

* * *

Federal, County and City law enforcement officials have been meeting recently with members of the County Grand Jury to evolve a plan for driving lawless elements from Los Angeles.

At New York City 250,000 marched on Fifth Avenue before 2,000,000 cheering spectators in the President's National Recovery Administration Day parade. Five hundred farmers, being dissatisfied with the Federal Milk Code and the prices it sanctions, have stopped shipping milk to the Chicago market. President **Roosevelt** has authorized the Agricultural Adjustment Administration to buy \$75,000,000 worth of surplus food and clothing materials for distribution among the destitute unemployed. The President has approved the bituminous coal wage agreement between the United Mine Workers and the operators of the Appalachian field.

* * *

At Bombay **Mahatma Gandhi** has declared a year's truce with the British Government, promising not to engage in civil disobedience or otherwise defy authorities until August, 1934. This marks the end of the one year sentence imposed on him last month and from which he was subsequently released after having fasted six days.

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* * *

At New York City Mayor **John P. O'Brien** vetoed two bills taxing stock shares and the gross income of security dealers, thus preventing the removal to Newark of the Stock Exchange trading.

* * *

Corporation Commissioner **Edwin Dougherty** has submitted the California Recovery Act Code for the Musicians Association for certain Northern California Counties. Under the code moaning saxophones will be tooted at a minimum of \$1 an hour, with a maximum of 45 hours weekly; musicians will receive \$7.50 for five hours at country dances and \$4.50 for three hours at city dances. Orchestra leaders would get \$5 additional.

* * *

Professor **Albert Einstein**, having fled from Belgium fearing the Nazis, has secluded himself in a log hut high on a barren Norfolk (England) heath where he is being closely guarded.

* * *

The Army balloon Stratostat, U.S.S.R., beat Professor **Auguste Picard's** record by nearly 9,000 feet with an ascent of about 11.8 miles. The balloon landed about 60 miles south-east of Moscow, after 8¼ hours in the air.

**NAMES OF PERSONS SERVING ON FEDERAL
COURTS CRIMINAL INDIGENT DEFENSE
PANEL FOR AUGUST, 1958**

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Leonard M. Colene	Walter Ned Pollock
John A. Dundas, II	Phil Saeta
Vera Virginia Fogg	Alan G. Sieroty
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